

Message Text

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ACTION EUR-12

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TO SECSTATE WASHDC 7310
INFO ALL EC CAPITALS
USMISSION GENEVA

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USEEC

PASS AGRICULTURE ELECTRONICALLY
PARIS ALSO FOR USOECD
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E.O. 11652: N/A
TAGS: EAGR, EEC
SUBJ: EUROPEAN COURT OF JUSTICE (ECJ) RULING ON NFDM
COMPULSORY PURCHASE SCHEME

REF: (A) BRUSSELS 10528 (B) BRUSSELS 7923

1. AS REPORTED IN THE REFTELS, IN JULY 1977 THE ECJ RULED THAT THE NFDM COMPULSORY PURCHASE SCHEME, WHICH OPERATED IN THE COMMUNITY FROM MARCH TO OCTOBER 1976, WAS ILLEGAL. AT THAT TIME, IT APPEARED THAT DAMAGES MIGHT BE AWARDED AT A LATER DATE TO FIRMS AFFECTED BY THE SCHEME. HOWEVER, ON MAY 25 THE ECJ DISMISSED THE DAMAGE SUITS BROUGHT BY SEVERAL GERMAN FIRMS AND ORDERED THE PLAINTIFFS PAY THE COSTS OF THE CASE. THE COURT'S JUDGEMENT CONTAINED THE FOLLOWING POINTS:

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A) "THE DECISION THAT A LEGAL ACT SUCH AS THE REGULATION IN QUESTION IS INVALID IS, HOWEVER, NOT IN ITSELF SUFFICIENT TO GIVE RISE TO NON-CONTRACTUAL LIABILITY OF THE COMMUNITY FOR DAMAGES SUFFERED BY INDIVIDUALS AS PROVIDED UNDER THE SECOND PARAGRAPH OF ARTICLE 215 OF THE EEC TREATY".

B) " . . . THE INDIVIDUAL CAN BE EXPECTED TO BEAR WITHIN
REASONABLE LIMITS CERTAIN DETRIMENTAL CONSEQUENCES
FOR HIS ECONOMIC INTERESTS RESULTING FROM A LEGAL ACT
WITHOUT ANY COMPENSATION FROM PUBLIC FUNDS EVEN WHERE
THE ACT HAS BEEN DECLARED INVALID."

2. A COMMISSION LEGAL OFFICER TOLD US THAT HE HIMSELF
FOUND THE ABOVE LINE OF ARGUMENTATION CONFUSING AND EVEN
"ASTONISHING". HOWEVER, HE SAID THAT THE ECJ DECISION WAS
ALSO BASED ON THE FACT THAT THE COMPLEXITY OF THE SCHEME
WAS SO GREAT AS TO MAKE IT NEARLY IMPOSSIBLE TO ESTABLISH
WHO ACTUALLY BORE THE DAMAGE RESULTING FROM IT AND THAT THE
REPERCUSSIONS OF THE SCHEME ON FEED PRICES WERE VERY LIMITED
AND DIFFICULT TO SEPARATE FROM OTHER ECONOMIC EFFECTS. HE
FELT THAT IN FACT THESE POINTS WERE DOMINANT IN LEADING THE
COURT TO RECH ITS DECISION.HINTON

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